THE HON'BLE SRI JUSTICE B.PRAKASH RAO
and
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.15307 OF 2005

Dated: 11-09-2006

Between:

The Commissioner,
MCH, Hyderabad

. . .Petitioner

And

Dr. Y.Krishna Reddy and others

. . .Respondents

THE HON'BLE SRI JUSTICE B.PRAKASH RAO
and
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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WRIT PETITION No.15307 OF 2005

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O R D E R: (per RR, J)

Aggrieved by the order of the Andhra Pradesh Administrative Tribunal, (for short 'the Tribunal'), in O.A.No.3803 of 2004 dated 26.11.2004, the Municipal Corporation of Hyderabad is before this Court.

The Tribunal, in its order dated 26.11.2004, observed that several other employees, who had rendered service earlier in the Government, had been given the benefit of revised pension. Several such instances were cited by the respondents/applicants before the Tribunal. While admitting that such benefits were, indeed, given. Sri A.V. Seshasai, learned standing counsel for the Municipal Corporation would rely on **CHANDIGARH ADMINISTRATION v. JAGJIT SINGH**, wherein the Apex Court held that illegality could not be perpetuated. Curiously, the Tribunal distinguishes the said judgment on the ground that it pertains to real estate transactions and has no application in cases involving grant of pensionary benefits. The Tribunal, while holding so, has directed that the total length of service including the service rendered in the Government shall be taken into consideration by the petitioner herein for granting revised pensionary benefits to the respondents/applicants.

Sri A.V.Sesha Sai, learned counsel for the petitioner would submit that merely because certain other employees were granted pensionary benefits though they were not entitled for such payment in accordance with Rule 36 of the Andhra Pradesh Revised Pension Rules, 1980 (for short 'the Rules), the Tribunal had erred in extending similar benefit to the respondents/applicants, when, in fact, it is well settled that illegality cannot be perpetuated. We find considerable force in this submission. The order of the Tribunal directing that the respondents/applicants shall be granted revised pensionary benefits on the ground that certain others were granted such benefits earlier, is not justified.

Shri P.S.Rajashekar, learned counsel for the respondents would, however, place reliance on sub-Rule 11 of Rule 36 to contend that grant of pensionary benefits in other cases, where such benefits were earlier granted in accordance with
sub-Rule (11) of Rule 36, was not an illegality and that once it is held that the earlier benefits granted to such employees is not illegal, denying such benefit to the respondents-applicants would amount to discrimination.

This aspect of the matter, more particularly the manner in which Rule 36 (11) of the Rules are to be interpreted, has not been considered by the Tribunal. Since the Tribunal is a Court of first instance, we consider it appropriate to set aside the impugned order and to remand the matter back to the Tribunal for its consideration afresh in accordance with law.

Learned counsel for the respondents/applicants points out that the respondents/applicants have already retired from service and any delay in adjudicating these matters would cause irreparable hardship to them.

We consider it appropriate, therefore, to direct the Tribunal to dispose of the said O.A., as expeditiously as possible, in any event,

not later than two months from the date of receipt of a copy of this order.

The writ petition is disposed of accordingly. No costs.

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(B.PRAKASH RAO, J)

11th SEPTEMBER, 2006.

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(RAMESH RANGANATHAN, J)

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